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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,152	03/01/2004	Joseph N. Casey	SP-1311	9984
44388	7590	10/20/2006		
SOLAE, LLC P. O. BOX 88940 ST. LOUIS, MO 63188				
			EXAMINER PRATT, HELEN F	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/790,152

Applicant(s)

CASEY ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11, 14, 15, 21-29, 31 and 34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9, 11, 14, 24-29, 31 and 34 is/are allowed.
- 6) ☒ Claim(s) 15 and 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15, 21-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. No basis is seen in the specification for excluding wheat from the Markush grouping.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15, 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutilh (4,608,267).

Dutilh discloses a composition containing choline-fortified cereal, wheat bran and honey. The choline is used in the claimed amounts (abstract). Claim 15 differs from the reference in that the reference uses different cereals such as wheat. However, wheat is considered to be similar to the other cereals, especially as previously wheat was listed

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in the same Markush grouping with the claimed cereals, and no patentable distinction is seen between the various cereals and wheat. The reference discloses that the extruded product can be added to breakfast cereal or eaten with milk (col. 5, lines 1-2). Applicants' specification does not exclude an extruded wheat bran product from their types of ready to eat cereals. Therefore, it would have been obvious to make a composition containing choline as shown by Dutilh.

Claims 21 and 22 further required that the cereal is flaked or puffed. However, the composition has been shown as above, and nothing has been shown that the composition could not have been puffed, especially as only two ingredients are claimed. The further ingredients as in claim 23 are well known ingredients found in cereals and nothing new is seen in their use. The reference discloses the use of honey (col. 6, lines 48-50), which is a sweetener. It is seen that the particular sweetener a matter of choice absent a showing of unexpected results using the claimed sweetener. Therefore, it would have been obvious to use known ingredients to make the composition, and to flake or puff a cereal composition.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over CN 1271539A.

Lu et al. disclose an instant barley gruel containing lecithin in amounts of 1-5%, which has been extruded and puffed, then crushed (abstract). The claims differ from the reference in the use of 5% of the AI. However, nothing is seen that adding 5% lecithin would not have been within the claimed amount of the AI. Therefore, it would

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have been obvious to make a cereal product containing the claimed ingredients, which contained lecithin in the claimed amounts. .

Claims 15, 21, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wullschleger (5227248).

Wullschleger discloses a ready to eat cereal product as in claims 15, 20, 21 containing 0.5 % choline chloride, which is seen to have been 5% of the adequate intake (col. 11, lines 25-70, col. 12, lines 1-25). Therefore, it would have been obvious to use known amounts of choline and to use it in a salt form.

#### ***Allowable Subject Matter***

Claims 1-9, 11, 14, 24-29, 31, 34 are allowed.

#### **ARGUMENTS**

Applicant's arguments filed 10-10-06 have been fully considered but they are not persuasive. Applicants argue that bran as in Dutilh is the outer coating of many grains. However, it is not excluded from the claims. It is not seen that wheat bran can be compared to corn cones. For a showing, wheat bran would need to be used.


It is not seen that Lu et al. or Wullschleger do not teach the claimed amount of choline because the claim does not say what amount is required, and nothing has been shown that 5% of the composition is not within the claimed range as in Lu et al. and nothing has been shown that the amount in Wullschleger is not within the claimed amount. To give weight to "at least 5% of the AI of choline would require knowing what the AI of choline was per serving, which is not known by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 10-14-06

  
**HELEN PRATT**  
**PRIMARY EXAMINER**